



March 7, 2001

Mr. C. Gaffney Phillips
Attorney at Law
P.O. Box 1093
Livingston, Texas 77351

OR2001-0897

Dear Mr. Phillips:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 144786.

The City of Onalaska (the "city"), which you represent, received a request for a particular police report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Initially, we note that the request for information also poses a series of questions which you do not address. The Public Information Act does not require a governmental body to perform legal research for a requestor or answer general questions. *See* Open Records Decision No. 563 at 8 (1990). But the Act does require the governmental body to make a good-faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 at 8 (1990). Therefore, if the city is in possession of information that is responsive to the requestor's questions, it must release that information. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

Section 552.108 of the Government Code, the "law enforcement exception," provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

Gov't Code § 552.108(a)(1)-(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 is applicable to that information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You inform this office that the requested information relates to an arrest for public intoxication. You state that this and two related arrests "concluded with plea [sic] to the Polk County Justice of the Peace, which pleas have not yet been referred to the Municipal Court Judge, but which will be accepted in due course upon referral." In order to withhold information under section 552.108(a)(1), the governmental body must demonstrate that the release of the information at issue "would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). You indicate that the requested information relates to a criminal case that has been concluded, subject only to the court's anticipated acceptance of the defendant's plea. You have not demonstrated, and the submitted information does not indicate, that the release of that information would hinder the court's acceptance of the defendant's plea or otherwise interfere with the investigation or prosecution of the case. We therefore find that you have not shown that the release of the requested information would interfere with a pending investigation or prosecution. Nor have you established that the information at issue relates to a closed criminal case that concluded in a result other than conviction or deferred adjudication. See Gov't Code § 552.108(a)(2). Consequently, the city may not withhold the requested information under either section 552.108(a)(1) or section 552.108(a)(2).

You further explain that one of the arrested individuals

complained to the Chief of Police, J.R. Jones, regarding the conduct of the officers involved in the arrest and the procedures followed during the incident. Upon receiving that complaint, Chief Jones instigated [sic] an internal review within the Department of Police, which review is still ongoing, and [he] believes that release of the information contained within the report will now hamper his department's investigation.

Section 552.108 is not applicable to an investigation of alleged police misconduct that does not involve a criminal investigation or prosecution. See *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.--El Paso 1992, writ denied) (stating that statutory predecessor is not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (declining to apply statutory predecessor to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer). Thus, the requested information may not be withheld under section 552.108.

You also raise section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that is protected by the common law right to privacy. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld under section 552.101 in conjunction with common law privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found.*, 540 S.W.2d at 685. In raising section 552.101, you state that the requestor

purports to make his request individually and on behalf of other individuals, who have not joined in his request. . . . The incident report also details a traffic stop on an unrelated individual who was released after search of her vehicle. Release of the report to the requestor could be embarrassing to the other individuals involved, and the corresponding details are of no legitimate concern to the public.

We have considered your arguments. But we do not agree that there is no legitimate public interest in information relating to the circumstances under which the other two individuals were taken into custody. Therefore, the city may not withhold the requested information under section 552.101 in conjunction with common law privacy. *See Open Records Decision Nos. 478 at 4 (1987) (stating that it is of legitimate public interest that a driver on public roads may have been driving while under the influence of alcohol or other intoxicants), 408 at 10 (1984) (stating that the fact that a person has been arrested for a felony offense is not a basis for withholding that person's name from the public).*

We note, however, that a social security number may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.* *See Open Records Decision No. 622 at 2-4 (1994).* It is not apparent to this office that the social security numbers in question were obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. We therefore have no basis for concluding that the social security numbers in question were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any of the social security numbers in question, the city should ensure that they were not obtained and are not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, we also note that the submitted information contains motor vehicle record information that the city must withhold under section 552.130 of the Government Code. Section 552.130 excepts from disclosure "a motor vehicle operator's or driver's license or permit issued by an agency of this state" and "a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a)(1), (2). The city must withhold vehicle identification numbers and Texas driver's license and license plate numbers under section 552.130, except for information pertaining to the requestor. The requestor has a special right of access to his own driver's license number under section 552.023(a) of the Government Code.¹

In summary, the city may not withhold the requested information under section 552.108 or section 552.101. However, the city may be required to withhold social security numbers under section 552.101 in conjunction with federal law, and it must withhold motor vehicle record information that does not pertain to the requestor under section 552.130. With these exceptions, the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

¹Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." The purpose of the legislation that enacted section 552.130 was to bring Texas into compliance with the federal Driver's Privacy Protection Act and to protect individual privacy interests by restricting the use of driver's license and motor vehicle information. *See* Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 1, 1997 Tex. Gen. Laws 4575; Transp. Code § 730.002.

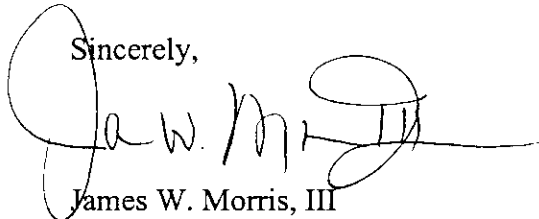
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 144786

Encl: Submitted documents

cc: Mr. William D. Rogers
2120 FM 3186 Road Smith
Onalaska, Texas 77360
(w/o enclosures)